

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ROBERT L. POPE, #572789

§

VS.

§

CIVIL ACTION NO. 6:13cv615

RICK THALER, ET AL.

§

ORDER OF DISMISSAL

Plaintiff Robert L. Pope, an inmate confined at the Skyview Psychiatric Facility of the Texas prison system, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. Pope is a chronic care psychiatric patient and is taking antipsychotic medication. The Skyview Unit is air-conditioned. He fears that he will be released from the Skyview Unit to a unit without air-conditioning, which could lead to a heat stroke and death. He wants a permanent injunction ordering the prison system to provide an air-conditioned chronic care facility for psychiatric inmates after they are released from the Skyview Unit. The complaint was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Third Report and Recommendation concluding that the lawsuit was too speculative to warrant injunctive relief. A recommendation was made to dismiss the lawsuit pursuant to 28 U.S.C. § 1915A(b)(1).

Pope has filed objections. He reiterated that he fears that he will be released to a unit which is not air-conditioned. Nonetheless, his fear of being released from the Skyview Unit to a unit that is not air-conditioned is too speculative to warrant injunctive relief. *See Bailey v. Sutherland*, 821 F.2d 277, 279 (5th Cir. 1987); *Luna v. Kliebert*, 368 F. App'x 500, 502 (5th Cir. 2010). He also complained in his objections that the prison system is not following its own rules and state law. In

order to state a basis for a meritorious civil rights lawsuit under § 1983, Pope must show a violation of clearly established constitutional right, as opposed to prison procedures or state law. *McCreary v. Richardson*, ____ F.3d ____, 2013 WL 5514746 at *6 (5th Cir. 2013). See also *Snowden v. Hughes*, 321 U.S. 1, 11 (1944) (“Mere violation of a state statute does not infringe the Constitution.”). Pope’s objections lack merit.

The Third Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Pope, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections raised by Pope are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Third Report and Recommendation (docket entry #19) is **ADOPTED**.

It is further

ORDERED that the civil rights complaint is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). All motions not previously ruled on are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 13th day of January, 2014.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE